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# Republican Policy Committee

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## *Restoring America's Competitive Edge*

### **Going After the Hidden Tax — Regulation**

Excessive regulation and red tape imposes an enormous burden on our economy. This hidden tax pushes up prices for goods and services on American households, dampens business investment, and limits the ability of small businesses to create jobs. The Clinton Administration's own National Performance Review, issued September 7, 1993, observed that the compliance cost imposed by federal regulations on the private sector alone was "at least \$430 billion per year — 9 percent of our gross domestic product."

Other economists have placed the direct combined federal regulatory burden on state and local governments and the private sector at from \$500 billion a year to over \$850 billion per year. In 1991, economist Thomas Hopkins of Rochester Institute estimated the combined direct federal regulatory compliance burden for 1994 to be \$630 billion. It is likely that the number would be higher if it had been estimated after studying the regulations being promulgated by the Clinton Administration's EPA and OSHA. Regardless, the indirect and cumulative productivity losses from federal regulation could double the annual cost figures.

During 1994, total federal government receipts were \$1.25 trillion. This is the receipts from all tariffs, taxes, and fees. These taxes amount to approximately \$13,100 per household. Using the conservative Hopkins estimate of the direct cost of federal regulations of \$630 billion, the regulatory burden on each American household averages at least \$6,550. Thus, for 1994, the federal regulatory costs are estimated to be exactly one-third the combined federal tax and regulatory burden of \$19,650 per household.

### ***Clinton's Efforts to Control Regulations Are All Talk***

Despite having acknowledged the enormous cost of federal regulations to the economy, the Clinton Administration offers little promise it will reduce the economic burden put on state and local governments, employers, and individual Americans. According to a column in *USA Today* of December 19, 1994, federal regulatory agencies now employ 131,412 people at an annual cost of nearly \$11.9 billion — both record numbers.

Although the Clinton Administration's 1993 *National Performance Review* promised to "end the proliferation of unnecessary and unproductive rules," the Administration's efforts appear focused solely on internal agency rules. In fact, the Clinton Administration, understandably, has been reluctant to tell the American people of its plans to continue accelerating its headlong increases in regulation.

On September 30, 1993, President Clinton signed Executive Order 12866, which allows federal agencies to issue regulations with less oversight and review by the Office of Management and Budget (OMB) than had been established under the previous Executive Order establishing regulatory review procedures. The previous OMB review procedures were established by President Reagan in Executive Order 12291. President Clinton's Executive Order 12866 used many of the same concepts and terms that were used in President Reagan's Executive Order 12291. However, significant differences from the Reagan Executive Order inherently favor the promulgation of more regulations under Clinton.

### ***Talking Points on the Administration's Regulatory Plan***

- On November 14, 1994, the Clinton Administration finally released its *Regulatory Plan*, which listed the Administration's 767 regulations completed during the past six months prior to October 1, 1994, and the Administration's intention to pursue 4,300 additional rulemakings during Fiscal Year 1995 and beyond.
- **Final Rules:** For Fiscal Year 1995 and beyond, the Administration is planning to pursue 1,937 final rules. Between November 20, 1994 through March 23, 1995, the Clinton Administration issued 122 "significant" final rules, as defined in the Clinton Executive Order 12866.
- **Proposed Rules:** For Fiscal Year 1995 and beyond, the Administration is planning to pursue 2,100 proposed rules:
- The Clinton Administration completed 757 rules and regulations in the last six months prior to October 1, 1994.
- The Clinton Administration issued over 20 percent more pages of regulations in the Federal Register during the 145 days following the November 8, 1994, elections than during the 145 days before November 8.

### ***Clinton Approaching Carter Record for Federal Register Pages***

For each of the first two years of the Clinton Administration, the number of pages of actual regulations and notices published in the *Federal Register* has exceeded any year since the Carter Administration. Despite rhetoric to the contrary, the Clinton Administration has

been increasing, not decreasing, the number of regulations. The number of "actual pages" [not counting corrections and blank pages] in the *Federal Register* in 1994 was 64,914. This is an increase over 1993's number of 61,166 total pages.

The Clinton Administration's record increases in *Federal Register* actual pages is exceeded only by the largest *Federal Registers* in the history of the Republic, which were compiled during President Carter's last two years in office, culminating in 73,258 actual pages in 1980. In contrast, President Reagan, with help from a Republican Senate, reduced the actual pages down to 44,812 in 1986. As soon as the Democrats regained full control of Congress, however, the number of regulations started increasing again. The Clinton Administration's 1994 number of pages is a 45-percent increase over the Reagan Administration's 1986 number.

Note, that the Clinton Administration is very aware that Republicans are counting *Federal Register* pages. There appears to be an increasing tendency for agencies to not publish appendices, guidance and reference documents, and other documents related to a rule, but rather "make available" those documents on request or "on-line." For example, the 300 reference protocols for EPA's Clean Air enhanced monitoring rule for large stationary sources is expected to exceed 5,000 pages, and will not be published in the *Federal Register*.

### ***Clinton Tries to "Reinvent" Regulations***

On March 16, 1995, the Clinton Administration conducted a press event at a local print shop to announce several "reinventing regulation" proposals. The announcements appear designed to preempt the Senate's action on regulatory reform legislation, particularly the markups scheduled for the following week in the Senate Governmental Affairs and Judiciary Committees. The Clinton Administration's timid proposals are in stark contrast to the serious efforts undertaken by the House and the Senate to slow the avalanche of new regulations, to ensure unbiased risk assessments, to require that costs are justified by the benefits, to reduce burdens on small businesses, to ensure appropriate judicial review of agency analyses, and to establish a permanent mechanism to eliminate existing regulations that do not meet these higher standards.

Most of the "reinventing regulation" proposals announced by the President are positive, but few have implementation deadlines, none is subject to judicial review, and none goes beyond what would be possible if the prescriptive underlying statutory requirements were changed by Congress. At least one proposal, the use of actual risk prioritization for drinking water treatment, appears to be related only to **future** rulemakings required by the Safe Drinking Water Act, which requires EPA to list, every three years, 25 new contaminants for which local systems must test. Without a legislative change to the Safe Drinking Water Act, however, the almost 90 contaminants already listed cannot be prioritized to reflect their actual relative health risks.

## ***Republican Efforts to Stop the Flood of Bad Regulations***

### **Unfunded Mandates Legislation**

On March 22, 1995, the President signed S. 1, a bill to require Congress to acknowledge the cost of any federal mandate imposed on state and local governments, or the private sector, before acting on a bill or amendment on the House or Senate floor [P.L. 104-4]. S. 1 further required the bill or amendment should provide federal assistance to cover any mandates on state and local governments, or be subject to a majority point of order. The Senate-passed bill also required the federal agencies to prepare economic impact statements for compliance costs imposed on state and local governments and on the private sector. After almost three weeks of extended debate, Democrats finally agreed to vote on final passage. The vote was 86 to 10. S. 1 was strengthened in conference with the House, and the conference report passed the Senate by a vote of 91 to 9 on March 15, 1995. The new law takes effect on the Congress on January 1, 1996, and on the federal agencies for proposed and final rules issued after September 30, 1995.

### **Moratorium Legislation**

On December 12, 1994, Republican Leaders of Congress sent a letter to President Clinton requesting he issue an Executive Order imposing a moratorium on all federal rulemaking for the first 100 days of the 104th Congress. The letter stated that the President should make appropriate exceptions for certain categories of regulations, such as those that are subject to a statutory or judicial deadline or are responding to emergencies, such as an imminent danger to human health or safety.

The Clinton Administration responded on December 14, 1994, with a letter from the Sally Katzen, director of the Office of Information and Regulatory Affairs. She stated that the Clinton Administration rejected the request for a moratorium, calling it a "blunderbuss that could work in unintended ways." In addition, the Clinton Administration deliberately ignored the health and safety exceptions suggested by the Republican leaders and raised emotional examples of regulations dealing with "tainted meat" and "Desert Storm Syndrome."

On February 24, 1995, the House of Representatives passed H.R. 450, to impose a moratorium on all agency actions (not generally exempted) retroactive to November 20, 1994, and to last until December 31, 1995, or until a comprehensive regulatory reform bill is enacted, whichever is earlier. The primary purpose of the moratorium is to provide an opportunity for substantive changes to be enacted to require federal agencies to use unbiased risk assessment and honestly compare costs and benefits before determining the least burdensome alternative consistent with the statutory requirements.

A companion bill to H.R. 450 was introduced in the Senate as S. 219. Although a less inclusive version of the bill was reported out of the Committee on Governmental Affairs on March 16, 1995, the vote was strictly along party lines. In the absence of any Democratic support, and the increasing proximity of congressional action on a comprehensive regulatory

reform bill that would end the moratorium anyway, a bipartisan substitute was offered during Senate consideration of S. 219. The substitute, which passed the Senate on March 29 by a vote of 100-0, provides for a 45-day congressional review process for nonroutine final agency rules, during which time Congress may enact, with expedited procedures, a resolution disapproving a rule. The resolution may be vetoed by the president, and Congress may override the veto. Final rules determined by the Administration to be "significant" will be, with certain exceptions, suspended for the 45-day congressional review period. The Senate-passed bill is now before the House.

### **Regulatory Reform of Agency Decision Processes**

On March 3, 1995, the House passed a comprehensive regulatory reform bill, H.R. 9, that imposes new requirements on federal agencies for improving the quality and trustworthiness of agency assessments of risks to human health and the cost-benefit analyses they prepare before promulgating their regulations. Three regulatory reform measures are working their way through the Senate: S. 291, introduced by Senator Roth, which has been ordered reported by the Committee on Governmental Affairs; S. 343, introduced by Senator Dole, which is expected to be reported by the Judiciary Committee prior to the Easter recess, and S. 333, introduced by Senators Murkowski and Johnston, which has been ordered reported by the Energy Committee by party-line vote. A synthesized version of these three bills is expected to come before the Senate in June.

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